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Report of the Secretary-General on the Activities of the Office of Internal Oversight Services

Note by the Secretary-General

1. Pursuant to General Assembly resolution 48/218 B of 29 July 1994, the Secretary-General has the honour to transmit, for the attention of the General Assembly, the attached report, conveyed to him by the Under-Secretary-General for Internal Oversight Services, on the investigation into the alleged conflict of interest in the United Nations Centre for Human Settlements (Habitat).

2. The Secretary-General takes note of its findings and concurs with its recommendations.

* A/52/150 and Corr 1.

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Annex

Report of the Office of Internal Oversight Services into alleged conflict of interest within the United Nations Centre for Human Settlements (Habitat)

Summary

In late April 1997, the Investigations Section of the Office of Internal Oversight Services was asked to inquire into a possible conflict of interest in the United Nations Centre for Human Settlements (Habitat). The question arose owing to a series of reports dating from 1994, from other oversight units and within the Centre itself, that raised but did not resolve the issue. The question of conflict of interest first emerged after a consultant to the Centre, who had been affiliated with a Nairobi-based consultancy group called Matrix Development Consultants, was hired as a human settlements adviser in the Centre'sTechnical Cooperation Division in February 1991. At that time she was cohabiting with a director of Matrix, whom she married the following year. Prior to the hiring of the staff member in 1991, she and other consultants associated with Matrix had been hired regularly by Habitat, by other organizations and by Governments to work on human settlement projects throughout Africa.

A year after the staff member was hired, the first in a series of contracts was given to Matrix by the unit in the Technical Cooperation Division to which she was assigned. The Government of the United Republic of Tanzania had specifically requested the services of the staff member's spouse in connection with a project for which the Centre and the United Nations Development Programme were providing technical and financial assistance. The staff member went to her supervisor, the Chief of the Technical Cooperation Division, to inquire as to how the request should be handled. He directed her to provide the Government with a list of several experts from which it could choose its preferred candidate. The staff member's spouse was selected by the Tanzanian Government, and he was engaged by the Centre under a reimbursable loan agreement. That agreement was reviewed and then ratified by the designated Habitat committee on such agreements.

However, from that point questions were raised in reimbursable loan agreement review meetings, and rumours were circulated concerning a link between the personal relationship of the staff member to the Matrix consultant and the issue of Habitat contracts with Matrix. No one alleged that Matrix consultants were not well-qualified experts or that the work assigned to them was not performed. Rather, using "common sense", but without referring to the applicable United Nations staff rule, some staff members perceived the personal relationship and the hiring of Matrix consultants to be conflict of interest on the part of the staff member.

Between 1991 and 1993, Matrix consultants were hired to provide expertise on seven projects. All such agreements were reviewed by the Centre's internal review committees and offices. The primary review committee was aware unofficially that the staff member and the consultant had a personal relationship, but did not question either the staff member or the Technical Cooperation Division about it and continued to approve the contracts. After receiving information on the conflict of interest matter from a member of the review committee in August 1993, the Acting Director of Administration met with the Chief of the Division and a conversation ensued on the committee's concerns. As a result of that conversation, the Chief informed the staff member,

in September 1993, that she and her unit were to have no role in any future contracts with Matrix. From that time forward, the Investigations Section has confirmed, no new contracts with Matrix have emanated from the staff member's unit.

None of the reviews or considerations, whether formal or informal, that have touched on this topic over the last five years has addressed the relevant United Nations rule on conflict of interest: staff rule 101.6 requires that to find a conflict of interest, the staff member must "be actively associated with the management of or hold a financial interest in any business concern". As the staff member was not personally active in Matrix and did not personally hold an interest in the firm, she cannot be found to have violated the rule. After the conflict issue was raised by the internal auditors in a report issued in November 1994, the Deputy Director of the Centre, in January 1995, called for an internal Panel of Investigation to review the matter. The panel reported that in its view a conflict of interest did exist. However, like the auditors, its opinion was framed from a common-sense view of conflict of interest, and not from the heavily restrictive provisions of the relevant staff rule on the subject.

Over a year later, in February 1996, the Acting Director of Administration wrote to the Deputy Director of the Centre expressing the view that no further contracts should be given to Matrix consultants while the staff member was employed by the Centre. The documentary evidence indicates that the memorandum was distributed only to the Centre's Contracts and Procurement Section and was placed in the staff member's personnel file; it was not circulated throughout the Centre until March 1997, when it was discovered by the Director of the Office of Programme Coordination during a search for records relating to the conflict issue. He then directed that it be circulated throughout the Centre.

In September 1996, an inspection of the Centre by the Central Monitoring and Inspection Unit of the Office of Internal Oversight Services was conducted. On 23 April 1997, a report based on the findings of the Unit was issued (A/51/884). In the summary of that report, the Office noted that a case of conflict of interest raised by the internal auditors in 1994 remained unresolved and that it intended to investigate the matter.

Given the available evidence, while the Investigations Section concurs with the common-sense view that the situation gives the appearance of a conflict of interest, it does not appear that United Nations staff rule 101.6 addresses the facts of the situation. That a staff member who benefits indirectly from contracts awarded to her spouse for which she has some responsibility may not be found to be in violation of the United Nations conflict of interest rule is the clearest evidence of the rule's deficiency. Thus, the Investigations Section must conclude that staff rule 101.6 fundamentally fails to protect the interests of the United Nations.

Further, the lack of sufficient and clear guidelines has created confusion as to what constitutes a conflict of interest at the United Nations. Although it should have been issued earlier, the September 1993 decision to exclude the staff member and her unit from involvement with Matrix was in the best interests of the Centre. It addressed the problem and should have resolved the issue; however, the matter was kept alive by internal politics.

Finally, the evidence does not support a finding of retaliation against a staff member for raising the issue of conflict of interest, and the record does not show that he suffered any damage to his career as a result of his discussion of the topic.

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I. Introduction

1. Following the release of the report of the Office of Internal Oversight Services on the United Nations Centre for Human Settlements (Habitat) in April 1997 (A/51/884), the Investigations Section of the Office was called upon to conduct an investigation into the conflict of interest case. Two investigators were assigned. Interviews were conducted at the Centre's headquarters, at Nairobi, between 13 and 28 May 1997. All available individuals having knowledge of the matter were interviewed, with some interviews conducted with former Habitat staff members in New York in June.

2. It is necessary to explain why the present report is so detailed on a subject some have perceived to be a simple conflict of interest case. First, at no stage previously had all the available information on the issue been assembled for comparison and review; second, no thorough study of the applicable United Nations Staff Rules had been undertaken to assist in the determination of whether the case was one of an actual conflict of interest or rather an apparent conflict of interest reflecting a common-sense application of just and reasonable behaviour; third, the report must be detailed and legalistic to allow the United Nations to understand the insufficient nature of the current conflict of interest rules.

3. The investigation team is greatly appreciative of the time and effort provided to it by all levels of staff during the investigation. The Executive Director of the Centre and the Legal Adviser have reviewed the recommendations of the investigation report and are in agreement with them.

II. Pertinent Staff Rules and Regulations

4. In consultation with the General Legal Division of the Office of Legal Affairs, the Investigations Section identified the only relevant legal provision of the United Nations on the issue of conflict of interest: staff rule 101.6, "Outside activities and interests".

Staff rule 101.6

5. As of this writing, the Office of Legal Affairs was preparing a draft code of conduct that included provisions as to conflict of interest. However, it appeared that the draft retained the same language found in staff rule 101.6 (b), which provided that:

> "No staff member may be actively associated with the management of, or hold a financial interest in, any business concern if it were possible for the staff member to benefit from such association or financial interest by reason of his or her official position with the United Nations."

6. It is clear that any determination in this case must rest on the relevant legal provisions of staff rule 101.6. The evidence adduced must be analysed against the requirements of those provisions, and on that basis, the determination of the case must rest.

III. Details of the investigation

Role of Unit II in the Centre's projects

7. The conflict of interest subject is centred on Unit II, one of the four geographic units within the Centre's Technical Cooperation Division. The staff member concerned began as a human settlements adviser in Unit II who coordinated human settlement projects with national Governments and the United Nations Development Programme (UNDP). She subsequently became the Unit II coordinator. It should be noted that the staff member had previously worked as an independent consultant, frequently under the umbrella of Matrix Development Consultants, between 1984 and 1991. She was engaged by the Centre as a consultant under special service agreements on 15 separate occasions during that period to work on projects in anglophone Africa.

8. Projects are requested by the national Governments and, after consultations among the Government involved, the human settlements adviser and UNDP, the project progresses technically through the geographic units of the Centre. This especially relates to the hiring of outside expertise for the completion of tasks within the projects.

9. In order to engage an external consultant for any project, the human settlements adviser is required to identify suitable candidates from the Centre's central roster of consultants and match them with the project's terms of reference. The human settlements adviser should then draw up a short list of candidates and submit it to the relevant Government. Once the Government has made its selection, the adviser provides details about the selected candidate to the unit's Project Management Officer, who submits an official request for either a reimbursable loan agreement or a special service agreement to the Personnel Recruitment and Administration Section.

10. The Personnel Section then submits the documents to the reimbursable loan agreement committee (or currently a management committee) for approval or clarification of any issues before engaging the services of the consultant. The section is responsible for all financial negotiations with the consultant.

11. The conflict of interest case is based on the role played by the staff member as a human settlements adviser in Unit II, and later as coordinator, in initiating, evaluating and certifying the work undertaken by her spouse on projects emanating from her unit.

Structure of Matrix Development Consultants

12. Matrix is a cooperative arrangement whereby individual consultants pay a nominal fee each month, as well as a percentage of each fee paid to them, for common expenses. It was formerly known as Consultants for Management and Development Programmes (CDP). The main consultants are not paid a wage by Matrix; rather they rely on income generated individually. For that reason, it was incorrect for the Centre to engage the services of the Matrix consultants under reimbursable loan agreements; special service agreements are designed for the hiring of individual consultants.

13. The staff member in question was a shareholder of CDP until at least 1986; however, she stated that she had disposed of her shares before joining the Centre in February 1991. The Investigations Section cannot confirm that date independently, as Kenyan Government records have provided information on shareholders only up to 1994, and the date of the sale of the staff member's shares is not listed.

First conflict of interest problems

14. The staff member approached the Chief of the Technical Cooperation Division in November 1991 when she was requested by the Government of the United Republic of Tanzania to hire a consultant with whom she was cohabiting for a Centre project (URT/90/033). The staff member wanted to clarify her position vis-à-vis the conflict of interest with her supervisor, so she sought his advice.

15. The Chief directed the staff member to offer several well-qualified candidates, including the consultant in question, to the Tanzanian Government for its final selection. The Chief believed that this would reduce the likelihood of any accusations of favouritism on the part of the staff member towards the consultant while still allowing the Tanzanian Government to select the candidate of its choice. Several candidates were offered to the Tanzanian Government and it again selected the consultant in question. The engagement of the consultant then progressed via standard recruitment procedures. Without further consultation with her supervisors, the staff member evaluated and certified the Matrix invoice, then included her spouse in several lists submitted to Governments, also without further consultation.

Personal relationship between staff member and consultant

16. The staff member stated during an interview that she had met the consultant, her current husband, in the late 1970s in England and had moved with him to Nairobi in 1981. They cohabited in Nairobi from that date and were married in Nairobi on 18 August 1992. However, no one from the Centre attended the wedding and she did not advise the Centre of her change in status for nearly three years.

17. A review of the staff member's personnel file revealed a memorandum written by her to the administration of the Centre dated 10 July 1995, in which she asked that her marital status be changed from "single" to "married". The staff member stated that she forgot to inform the administration of her change of status and discovered the error only upon renewing her contract in early 1995. She said that she did not notice the error in previous contract renewals.

Consultant's contractual history with the Centre

18. The consultant had been hired by the Centre under reimbursable loan or special service agreements on seven separate projects between 1979 and February 1991, the date on which the staff member began working in Unit II. In addition, he had worked briefly for the Centre in 1983 and 1984. Thus, the consultant was well-known professionally to the Centre and the Technical Cooperation Division prior to the staff member's recruitment.

19. The consultant was personally engaged on six projects between January 1992 and September 1993. Four of those projects were initiated, evaluated and certified by Unit II. Matrix consultants were engaged on another four projects during that period. The total amount paid to the consultant

for the period from January 1991 to September 1993 was $145,819, out of a total of $175,905 paid to the Matrix group of consultants.

Management response to the conflict of interest

20. The reimbursable loan agreement committee had learned in 1993 that the staff member and the consultant were involved in a close personal relationship. At that time the committee questioned the ethics of the staff member in proposing her spouse for a number of contracts emanating from Unit II, but continued to approve the contracts with Matrix. The Acting Chief of Administration stated that a member of the reimbursable loan agreement committee had raised the conflict issue with him in August 1993 and had suggested that the matter was in need of clarification by Centre management.

21. The Chief of the Technical Cooperation Division believed that the decision he took in November 1991 on the handling of Government requests for the consultant via Unit II had resolved the conflict of interest issue. The subject did not come to his attention again until September 1993. At that time the Acting Chief of Administration, in response to the request of the reimbursable loan agreement committee member, raised the question of a conflict of interest involving the staff member and Matrix consultants. The Chief of the Technical Cooperation Division was informed by the Acting Chief of Administration that a large number of reimbursable loan agreements involving Matrix consultants were emanating from Unit II.

22. Following that discussion, the Chief of the Technical Cooperation Division directed the staff member that from that point forward, Unit II could not be involved in any aspect of contracts with Matrix or any of its consultants. The issuance of such a verbal directive has been confirmed by both the former Deputy Director and the former Acting Chief of Administration, although no documentary evidence exists.

23. The Chief of the Technical Cooperation Division further proposed that all future contracts involving Matrix consultants and countries for which Unit II had responsibility would be handled by the Project Management Officer in the Global and Interregional Programme. The Chief of the Technical Cooperation Division believed that this decision would resolve the conflict problem. The Global and Interregional Programme was already involved in projects in Ghana and the United Republic of Tanzania that the consultant had been associated with in the past, and so could readily assume that responsibility.

Audit of reimbursable loan agreements by internal auditors

24. An audit of reimbursable loan agreements in the Centre was undertaken by the internal auditors in 1994, and their report was submitted to Centre management on 21 November of that year. The audit reported on the conflict of interest issue and identified several reimbursable loan agreements that had been issued to Matrix by the staff member, who prior to joining the Centre had been a partner in the company and had resided with and nominated a present director of the company as the sole beneficiary of her Pension Fund settlement. The report also stated that there was a correlation between the position of the staff member and extensive contracting of the company in which she had been a partner.

25. The audit report did not attempt to link the activities identified as a conflict of interest with the United Nations staff rule applicable to such cases. Nor does the report detail any information pertaining to the structure of Matrix vis-à-vis the employment of consultants and how that might have affected the claim of a conflict. However, the report, which was issued after the 1993 decision to separate the staff member's unit from Matrix contracts, properly raised an issue of concern during the audit process.

1995 panel of investigation

26. In response to the finding of a conflict of interest in the Centre in the 1994 audit of reimbursable loan agreements, the Deputy Director established a panel in January 1995 to investigate and report on the case. The panel comprised three staff members and was given one month to conduct an investigation. The report, submitted to the Deputy Director on 28 February 1995, contained a range of recommendations.

27. The panel found that there was no blame to be attached to the staff member as she had informed her supervisor of the possible conflict of interest in 1991 and had received instructions on how to handle the issue. When the issue arose again in 1993, she stated that she had received direct instructions from her supervisor to cease all Unit II involvement in Matrix contracts. The staff member maintained that she had followed those instructions up to the present time.

28. The panel laid the blame for the conflict of interest on systemic problems in the management of the Centre, specifically in not issuing clear guidelines on how to handle such problems. The panel did attempt to link the activities undertaken by the staff member in regard to Matrix to the United Nations Staff Rules. It made reference to article I of the Staff Rules, on duties, obligations and privileges, and to the Report on Standards of Conduct in the International Civil Service, paragraph 4 (1954), but as with the auditors' report, it did not adequately match the activity with the pertinent rule (staff rule 101.6). Rather, the panel concluded, quite reasonably, that the primary burden in terms of transparency rested with the staff member about to undertake actions that might be construed as containing an element of conflict of interest.

29. The panel did not investigate the full scope of United Nations Staff Rules and Regulations in finding that a conflict of interest was apparent in the Centre. Apparently, no further legal research was undertaken by the Deputy Director, who is a lawyer, to identify fully the legal position vis-à-vis conflict of interest in the United Nations.

Alleged continuation of the conflict of interest

30. After the September 1993 decision by the Chief of the Technical Cooperation Division to cease the engagement of Matrix consultants by Unit II, four agreements, namely, two separate procurement contracts, one reimbursable loan agreement and one special service agreement, were found to have been awarded to Matrix consultants. Although popular belief in the Centre was that they emanated from the staff member's unit, none did.

31. This misapprehension led to the continuation of the conflict of interest issue within the Centre. All contracts were initiated by other units within the Technical Cooperation Division; however, one contract, which was not initiated or evaluated by Unit II, utilized the Unit II Project Management Officer to oversee the payment of outstanding invoices from the project. The staff member in question played no role in that action. Therefore, the investigators determined that since the September 1993 management decision, neither Unit II nor the staff member had initiated, evaluated or certified any Matrix consultant contracts, in accordance with the directive from the Chief of the Technical Cooperation Division.

Management retaliation against a staff member for raising the conflict of interest matter

32. Allegations have been made by the former Acting Chief of Administration that as a result of his raising questions in 1994 on the continuation of the conflict of interest case, he was removed from that position and his career has suffered as a result.

33. The investigators found that legitimate factors determined the replacement of the staff member in the position of Acting Chief of Administration in September 1994. Those factors were not related in any way to the conflict of interest matter; rather, they pertained to the upcoming formation of the United Nations Office at Nairobi, which would involve a merger of administrative functions previously conducted by the Centre and the United Nations Environment Programme. It was also found that when the staff member lodged his concern regarding the continuation of the conflict of interest into 1994, it was based on inaccurate information as to the role of Unit II in Matrix contracts after September 1993.

34. The reasons provided by Centre management as to the post-September 1994 assignments of the staff member and the lack of documented evidence of career-related hardship lead to the finding that the staff member was not the recipient of retaliatory or punitive action from Centre management on the conflict of interest matter.

Breach of contractual obligation

35. Contained within the terms and conditions of Centre contracts with external contractors is a clause on direct and indirect benefit to United Nations officials (clause 10), which states:

> "The contractor represents and warrants that no official of the United Nations has been, or shall be, admitted by the contractor to any direct or indirect benefit arising from his contract or the award thereof. The contractor agrees that breach of this provision is a break of an essential term of this contract."

36. The consultant, on behalf of Matrix, signed a contract under the above conditions on 1 November 1994. The consultant was asked in May 1997 if he had been aware of the clause in the contract regarding benefit to United Nations officials. He responded affirmatively and agreed that the staff member, as his wife, did receive an indirect benefit from the awarding of the contract to him through Matrix.

37. This action by the consultant constituted a breach of clause 10 of the conditions of service for contractors engaged by the Centre. Normally, such a breach would cause the contract to become void. However, given that the work undertaken by the contractor was completed in late 1995 and all fees have been paid, the United Nations must seek alternative measures to address the breach by the contractor. The Investigations Section believes that the breach of contract requires the United Nations to enforce a ban upon the future hiring of this consultant by the Centre.

IV. Analysis of the facts of the case and the United Nations Staff Rules and Regulations

Staff rule 101.6

38. As noted in section II of the present report, the resolution of this case rests on the application of the relevant rule to the facts of the case. As mentioned, the applicable rule for conflict of interest on the part of a staff member is staff rule 101.6 (b) (see para. 5).

39. Under that rule, a finding of conflict of interest can be made only where the following three elements are present:

(a) The person involved is a staff member;

(b) The person involved is active in the management of the firm or holds a financial interest in the firm;

(c) The person can benefit from his or her involvement with the firm because of the role that he or she has as a United Nations staff member.

40. First, the involved person is a staff member of the Centre, has been since 4 February 1991 and continues in that role today, and so the provisions of staff rule 101.6 (b) apply to her.

41. Second, the staff member must be shown to "be actively associated with the management of a business", in this case Matrix, or must be found to "hold a financial interest in" Matrix. This is the most difficult provision to analyse, as there are no recorded decisions that the Investigations Section or the Office of Legal Affairs could identify as having provided guidance on their meaning. As such, we must follow the plain meaning of the words themselves.

42. Can it be shown that the staff member at any time while employed by the Centre, was actively associated with the management of Matrix? The answer is no. None of the interviews conducted nor the available documentation provides evidence that the staff member was personally involved in the management of the firm since she began working as a staff member at the Centre. Her personal relationship with a principal of the firm is not proof of any management of the firm on her part, as she must be associated herself, not through her partner. Under the rule, Investigations Section cannot assume that the spousal relationship alone creates an association that is prohibited per se.

43. Can it be shown that the staff member holds a financial interest in Matrix? Again, the evidence requires a negative finding. The language of the rule requires that the evidence demonstrate that she "holds" an interest. While her spouse holds shares in Matrix, his financial interest cannot be imputed to her. In other words, the rule requires that the staff member herself must hold the financial interest, as in holding shares of stock — which, according to the Registry of Businesses in Kenya, the staff member has not done, at least since 1994. The staff member acknowledges that she did hold shares when she worked with the firm during the mid-1980s but that she removed herself as a shareholder prior to joining the Centre in 1991, and the investigation revealed no evidence to contradict her.

44. Third, can it be shown that the staff member received a benefit by reason of her position with the Centre? It can be easily proven that, by virtue of her position with the Centre, the staff member stood to benefit personally, albeit indirectly, through contracts given to her husband. If the rule required only a finding that she "have", rather than "hold", a financial interest, the evidence would fully justify a finding by the Investigations Section that she had a prohibited conflict of interest. Both the staff member and the consultant acknowledged to the investigators that she stood to benefit indirectly from any earnings by her husband, at least since their marriage in August 1992. Moreover, as the staff member did not notify the Centre's administration of her marriage until some three years after the event, the circumstances suggest an intent to withhold that information. The difference between the two legal concepts — "holding" versus "having" a financial interest — makes all the difference here.

V. Conclusions

45. On the basis of the evidence compiled in the investigation, the Investigations Section agrees with those who have examined the contracts with Matrix since 1991 that there is an *appearance* of a conflict of interest owing to

the staff member's involvement with Matrix contracts, particularly those awarded to the consultant after her marriage in August 1992. However, as discussed in section IV of the present report, the provisions of staff rule 101.6 do not allow for a finding of an *actual* conflict of interest. As a result, the Investigations Section cannot charge the staff member with a violation of that rule.

46. The Investigations Section notes the difficulty here, as previous reports on the subject by the internal auditors in 1994, the Centre's panel of investigation in 1995 and the report of the Office of Internal Oversight Services of April 1997 all indicate a conflict of interest. Moreover, the case has generated divisive debate within the Centre as individuals examined what they knew of the situation and saw a violation — what the investigators have identified as a "common-sense" view of conflict of interest.

47. However, none of the earlier investigations performed the legal analysis of comparing the facts of the case with the rules of the United Nations. It is of concern to the Office of Internal Oversight Services that the former Deputy Director of the Centre, a lawyer, could have provided legal advice to senior management that might have clarified this situation years earlier, at least as of early 1995, following his receipt of the investigation panel's report.

48. Nevertheless, the critical problem in this case, and for the United Nations generally, is the absence of a clear and substantial conflict of interest provision that alerts staff members to the problems inherent in any division of loyalty. Without such a rule, both staff members and managers will find themselves in the same confusing and awkward position as the senior managers of the Centre. The United Nations needs to take the steps necessary to protect its interests and those of the Member States in the expenditure of its limited financial resources.

49. While in this case there was no charge or evidence that the work had not been satisfactorily performed, it is clear that, hypothetically, the rule as written would allow for an unscrupulous staff member to arrange for contracts for family members — without penalty under staff rule 101.6. If the United Nations wishes to ensure undivided loyalty, then the rules of the United Nations must reflect that wish. Until that occurs, the United Nations remains vulnerable.

VI. Findings

Did a conflict of interest occur?

50. As discussed, the existing provisions of staff rule 101.6 do not provide a sufficient definition of conflict of interest to embrace the facts of this case. The very restrictive elements of the rule will preclude a finding of a conflict in most cases where common sense would suggest — as it did for the internal auditors, the panel of investigation, the Central Monitoring and Inspection Unit and others in the Centre — that one exists.

51. The facts of the case are clear in that the staff member not only recommended and approved the award of consulting contracts to her husband, both before and after her marriage, but also that she approved and certified for payment several of those invoices. While there is no charge that the consultant was not fully qualified to do the work or that he did not do the work, the appearance of a conflict clearly exists when a staff member participates in the contracting process as occurred here.

52. Nonetheless, because the legal provisions must govern, no violation of staff rule 101.6 can be adjudged. Although the actions of the staff member reported here cannot be held to have violated the rule, the staff member's conduct, including her failure to notify the Centre of her marriage for three years, does not constitute appropriate behaviour by an international civil servant.

Was management's response appropriate?

53. As each issue related to the conflict of interest issue was raised to management, the matter was addressed with varying degrees of success. The issues raised were as follows:

(a) The verbal directive to the staff member by the Chief of the Technical Cooperation Division in November 1991 to offer several qualified candidates to the Government of the United Republic of Tanzania from which it could choose its preferred candidate addressed only the issue of selection of candidates by Governments, not the issue of certification and evaluation of the consultant's work by the staff member;

(b) The directive to the staff member by the Chief of the Technical Cooperation Division in September 1993 that Matrix contracts could no longer be handled by her unit was very successful in resolving the conflict of interest

problem within Unit II, but should have been documented to the management team of the Centre;

(c) The issue remained alive in some sections of the Centre as a result of misinformation as to the role of Unit II in post-1993 Matrix hirings and the non-disclosure of the September 1993 decision;

(d) The Deputy Director's decision in January 1995 to empower the panel of investigation was correct and timely, but the issue again remained alive because of the Deputy Director's decision to accept, but not to distribute, the panel's recommendations;

(e) The Deputy Director again lost the opportunity to resolve the conflict issue by not informing Centre staff members of the 27 February 1996 memorandum from the new Acting Director of Administration stating that no further contracts would be let to Matrix by Habitat while the staff member remained in the employ of the Centre;

(f) When the conflict issue was raised in the report of the Office of Internal Oversight Services, the Director of the Office for Programme Coordination looked for documents related to the issue. He discovered the February 1996 memorandum in the staff member's file and arranged for it to be issued to all sections of the Centre to clarify the conflict of interest situation.

54. No cohesive plan for addressing the legal aspect of the conflict issue was developed or discussed, but the lack of clarity on what conduct constitutes a conflict of interest arises from the current rule. The code of conduct guidelines developed by the Director of the Office of Programme Coordination to address the conflict issue were sent to the Office of Legal Affairs for comment in March 1997. Its response required a loosening of the guidelines to ensure that they conformed fully with staff rule 101.6.

55. The September 1993 decision by the Chief of the Technical Cooperation Division to disallow the staff member and her unit to be involved in Matrix contracts was correct in the view of the Office of Internal Oversight Services and it resolved the conflict problem: no new Matrix contracts were handled by the staff member or Unit II thereafter in accordance with the directive. His reissue of the February 1996 memorandum in March of 1997 effectively halted all contractual arrangements between Matrix consultants and the Centre. Those two decisions were the only ones that actually aided the Centre in resolving the conflict of interest issue.

56. It appears that the conflict issue was raised repeatedly for a variety of reasons by those who had other, largely unrelated, grievances against the administration of the Centre. In the view of the Office of Internal Oversight Services, the viability of this issue was fed by internal disputes on other issues and by the lack of clarity in the United Nations as to what constitutes a conflict of interest. While the Investigations Section could criticize management's actions or judgement in this case, to do so would not accurately reflect the situation, namely, that the absence of a policy by the United Nations and the existence of a rule that provides virtually no protection to the interests of the Organization demonstrate that the United Nations has failed to provide its managers and staff members with the requisite guidance on the issue. Indeed, it may be reasonably inferred that staff rule 101.6 indicates that in the United Nations it is not a conflict of interest for a staff member to be involved in contracts between the United Nations and a spouse.

Did management retaliate against a staff member for having raised the issue of the conflict?

57. Allegations have been made by the former Acting Chief of Administration that, as a result of his raising questions in 1994 on the continuation of the conflict of interest case, he was removed from that position and his career has suffered as a result. The reasons provided by management as to post-September 1994 assignments for the staff member and the lack of documented evidence of career-related hardship led to the finding that the staff member was not the recipient of retaliatory or punitive action from management on the conflict of interest matter.

Was there a breach of contractual obligation?

58. The consultant, on behalf of Matrix, signed a contract on 1 November 1994. The consultant was asked in May 1997 if he had been aware of the contractual clause requiring him to warrant that no official of the United Nations would have any direct or indirect benefit from the contract. He responded affirmatively and agreed that the staff member, as his wife, did receive an indirect benefit from the awarding of the contract to him through Matrix. That action by the consultant constitutes a breach of clause 10 of the conditions of service for contractors engaged by Habitat.

VII. Recommendations

59. The recommendations of the Investigations Section have been reviewed and accepted by the Office of Legal Affairs and by the Centre. Recommendation 2 has been implemented, but recommendations 3 and 4 are pending further review and consultation on the legal implications. Recommendation 1 is the most difficult one to resolve, as the suggested change involves the new code of conduct, which is the subject of complex staff-management consultations. However, the Office of Internal Oversight Services requests that, given the clear problems that the current staff rule poses, those engaged in the consultations act to resolve the issue in the best interests of the United Nations. The recommendations of the Office of Internal Oversight Services are as follows:

Recommendation 1. The Office of Legal Affairs, which is actively engaged in the development of the new code of conduct, should be given full support and direction to strengthen and clarify the conflict of interest provisions. It should not be the case that the United Nations rule allows staff members to utilize the limited financial resources provided by the Member States to enrich themselves indirectly through their family members by virtue of their positions. The new provision should incorporate requirements that prohibit such conduct and are such that staff members are on notice that any activity performed by the staff member with any interest other than that of the Organization is prohibited (IV97/023/01);

Recommendation 2. Senior management of the Centre should ensure that the staff member married to the Matrix consultant, in whatever capacity she serves the Organization, has no involvement with decisions to initiate, evaluate or certify consultancy contracts with Matrix. The September 1993 decision by the Chief of the Technical Cooperation Division, who is now Director of Programme Coordination, was clearly in the best interests of the Organization. The Office recommends that he issue a letter restating the September 1993 decision and that the letter be acknowledged, agreed to and signed by him and the Chief of the Technical Cooperation Division and the staff member involved; any violation of its terms by her should be cause for dismissal (IV97/023/02);

Recommendation 3. The senior management of the Centre should consult with the Office of Legal Affairs on the continuation of the decision to suspend all contracts with the consultants at Matrix other than the consultant who is the spouse of the staff member (IV97/023/03);

Recommendation 4. Also in consultation with the Office of Legal Affairs, senior management should advise all Centre staff in writing that as a result of the consultant's breach of the 1 November 1994 contract (CON/HAB/94/036) under project GLO/92/D12, no further contracts are to be awarded to him (IV97/023/04).

VIII. Implementation of recommendations

60. The Office of Internal Oversight Services is pleased to report that the Centre and the Office of Legal Affairs have accepted the above recommendations. They have informed the Office of the status of implementation of the recommendations as follows:

Recommendation 1 (IV97/023/01). The Office of Legal Affairs, after consultation with the Staff-Management Coordination Committee, has developed an amendment to the code of conduct to strengthen the existing provisions relating to conflict of interest by specifically adding to staff rule 101.6 the clause "direct or indirect benefit". The amendment has been approved by the Secretary-General, but has yet to be ratified by the General Assembly.

Recommendation 2 (IV97/023/02). The Centre has fully implemented this recommendation.

Recommendation 3 (IV97/023/03). The Centre has commenced consultation with the Office of Legal Affairs on the nature of the ongoing contractual relationship with Matrix consultants other than the spouse of the staff member.

Recommendation 4 (IV97/023/04). The Centre has commenced consultation with the Office of Legal Affairs on the breach of contract matter and the issuance of advice to management on any future contractual arrangements with that consultant.

(Signed) Karl Th. **Paschke**
Under-Secretary-General
for Internal Oversight Services